

DALAJ INTERNATIONAL CO.

CONTRACT NO. V665C-537

VABCA-4562

VA MEDICAL CENTER
SEPULVEDA, CALIFORNIA

Shahin Aragi, Owner, Dalaj International Co., Los Angeles, California, for the Appellant.

Stacey North Willis, Esq., Trial Attorney, and ***Phillipa L. Anderson, Esq.***, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER OF DISMISSAL

1. On February 5, 1996, the Board received the Government's MOTION TO DISMISS FOR FAILURE TO PROSECUTE. On February 26, 1996, the Board received MOTION OF APPELLANT FOR EXTENSION OF TIME TO OPPOSE MOTION TO DISMISS AND TO RESPOND TO DISCOVERY, requesting an extension until March 22, 1996 to reply to the Government Motion. The request was granted, but no reply was received.
2. By certified letter dated April 3, 1996, the Board instructed the Appellant to show cause why the appeal should not be dismissed for failure to prosecute. The Appellant was granted until May 3, 1996 to respond. The Appellant received the Board's certified letter on April 11, 1996.
3. As of the close of business, May 3, 1996, the Appellant had not contacted the Board, either by mail or by telephone, in response to the Government's MOTION. The Government's MOTION, therefore, is **GRANTED**. Accordingly, VABCA No. 4562, the appeal of Dalaj International Company, is dismissed with prejudice pursuant to Board Rule 31.

IT IS SO ORDERED

DATE: **May 6, 1996**

We Concur

RICHARD W. KREMPASKY
Administrative Judge

DAN R. ANDERS
Administrative Judge

JAMES K. ROBINSON
Administrative Judge

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Shahin Aragi, Owner, Dalaj International Co., Los Angeles, California, for the Appellant.

Stacey North Willis, Esq., Trial Attorney, and **Phillipa L. Anderson, Esq.**, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER TO SHOW CAUSE

1. On February 8, 1996, the Board issued a Memorandum to the Parties, directing the Appellant to file a response to the Government's MOTION TO DISMISS FOR FAILURE TO PROSECUTE by no later than February 20, 1996.

2. On February 20, 1996, Appellant's Counsel filed a MOTION OF APPELLANT FOR EXTENSION OF TIME TO OPPOSE MOTION TO DISMISS AND TO RESPOND TO DISCOVERY. In his MOTION, Appellant's Counsel, Mr. Franklin Lane, stated that he had been suspended from the practice of law by order of the California State Bar Court.

3. In its February 21, 1996 Memorandum to the Parties the Board recited from Board Rule 26, Representation, which requires that counsel be "an attorney at law duly licensed." The Board then stated that Mr. Lane could no longer "represent Appellant before this Board." The Board then directed the Appellant, Mr. Shahin Aragi, to file its response to the Government's MOTION and its Notice of Appearance by March 22, 1996.

4. Board Rule 31, Dismissal Or Default For Failure To Prosecute Or Defend, reads as follows:

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to paragraph (ii) of this section (Rule 35). If good cause is not shown, the Board may take appropriate action.

See generally, National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 640-41,

96 S.Ct. 2778, 2779-80, 49 L.Ed.2d 747 (1976); *Metadure Corp. v. United States*, 6 Cl.Ct. 61 (1984); *Transcriptionists-On-Call*, VABCA No. 3723, 93-2 ¶ 25,670.

5. As of April 3, 1996, no response has been received from the Appellant. Accordingly, the Board grants the Appellant until *Friday, May 3, 1996* to respond to the Government's MOTION and to SHOW CAUSE why this appeal should not be dismissed with prejudice under Board Rule 31 for failure to prosecute.

IT IS SO ORDERED

DATE: **April 3, 1996** _____

RICHARD W. KREMPASKY

Administrative Judge

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SEPULVEDA, CALIFORNIA

Shahin Aragi, Owner, Dalaj International Co., Los Angeles, California, for the Appellant.

Stacey North Willis, Esq., Trial Attorney, and **Phillipa L. Anderson, Esq.**, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

MEMORANDUM TO THE PARTIES

1. On February 8, 1996, the Board directed Appellant to respond to the Government's Motion to Dismiss by February 20, 1996. On February 20, 1996, the Board received correspondence from Mr. Franklin K. Lane, indicating that he has been suspended from the practice of law by order of the California State Bar Court. Board Rule 26, Representation, reads as follows:

An individual appellant may appear before the Board in person; a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any State, commonwealth, territory, the District of Columbia, or in a foreign county. An attorney representing an appellant shall file a written notice of appearance with the Board.

Since, at present, Mr. Lane is not "an attorney at law duly licensed" he may not represent Appellant before this Board. Accordingly, pending the filing of a Notice of Appearance by Appellant, the Board will consider Mr. Shahin Aragi as appearing for Appellant.

2. Appellant's response to the Government's Motion to Dismiss and its Notice of Appearance shall be filed on or before, *Friday, March 22, 1996*.

3. In his communication to the Board, Mr. Lane represented that he anticipated that Appellant will obtain new counsel by March 4, 1996. The Board urges Appellant, or its counsel, to confer with the Government's counsel as soon as possible for the purpose of agreeing to a schedule for accomplishing the actions required in the Board's January 26, 1996 SCHEDULING ORDER. Should such agreement be reached, the Board expects the Government to withdraw its MOTION and for the parties to request a telephonic prehearing conference for the purpose of reestablishing the schedule for bringing this matter to hearing.

DATE: **February 21, 1996** _____

RICHARD W. KREMPASKY

Administrative Judge

CF/FRANKLIN LANE, ESQ.

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SEPULVEDA, CALIFORNIA

Franklin K. Lane, Esq., Los Angeles, California, for the Appellant.

Stacey North Willis, Esq., Trial Attorney, and ***Phillipa L. Anderson, Esq.***, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

MEMORANDUM TO THE PARTIES

The Government has filed a MOTION TO DISMISS FOR FAILURE TO PROSECUTE under Rule 31. Appellant's response to the MOTION shall be filed with the Board and the Government on or before *Tuesday, February 20, 1996*.

DATE: **February 8, 1996** _____

RICHARD W. KREMPASKY

Administrative Judge

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SEPULVEDA, CALIFORNIA

Franklin K. Lane, Esq., Los Angeles, California, for the Appellant.

Stacey North Willis, Esq., Trial Attorney, and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

**SCHEDULING ORDER
(AMENDMENT)**

1. Due to the Federal government furloughs in November and December, 1995 and the departure of the Government's counsel originally appearing in this matter, it is necessary to set a new schedule for completion of necessary prehearing actions.

2. Accordingly, the following schedule is established which amends the schedule set forth in the Board's Scheduling Order, dated November 6, 1995.

REVISED SCHEDULE

ACTION DUE DATE

Last Day For Discovery Requests	Friday, March 8, 1996
Submission Of Witness List to Other Party	Friday, March 15, 1996
Hearing Election	Friday, March 8, 1996
Joint Status Report	Friday, March 22, 1996
Telephonic Prehearing Conference	Tuesday, April 2, 1996 at 1:00 pm (est)

Except as indicated above, all other provisions of the Scheduling Order, dated November 6, 1995, remain in effect.

IT IS SO ORDERED

DATE: **January 26, 1995** _____

RICHARD W. KREMPASKY

Administrative Judge

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VA MEDICAL CENTER

SEPULVEDA, CALIFORNIA

Franklin K. Lane, Esq., Los Angeles, California, for the Appellant.

John Manfredonia, Esq., Trial Attorney, and **Phillipa L. Anderson, Esq.**, Acting Assistant General Counsel.

SCHEDULING ORDER

The parties are advised that I have been assigned as the Presiding Judge in this appeal in place of Chief Administrative Judge McMichael. Accordingly, in the future, all correspondence pertaining to this appeal should be addressed to my attention.

This Scheduling Order incorporates and supersedes the Board's June 30 and July 25, 1995 Memoranda To The Parties and these Memoranda are hereby vacated. The instructions in this Order are designed to insure that necessary prehearing actions are accomplished in a timely fashion.

The Board notes that Appellant has filed a supplement to the Appeal File consisting of 41 Exhibits currently designated as Exhibits 101-141. Appellant's Appeal File Exhibits are hereby redesignated as Exhibits 58-98. The parties shall confer prior to the submission of any further supplements to the appeal file and any additional exhibits shall be numbered in order beginning with Exhibit 99.

I. Applicable Rules

The Board's Rules 136 (38 CFR § 1.782, effective March 5, 1982) are applicable to all appeals processed under the Contract Disputes Act. All references to the Board's Rules will be by Rule number (*e.g.* Rule 4).

II. Discovery

A. Board Rules 14 and 15 provide for discovery. The Board encourages and expects the parties to

conduct discovery voluntarily. They should cooperate by exchanging or making available all relevant data. Attempts to gain advantage through surprise by concealing information may result in the Board refusing to receive evidence or imposing other appropriate sanctions.

B. If any claim of privilege or other objection to discovery arises which the parties cannot resolve, the party seeking discovery should request and provide justification for a formal discovery order. The other party shall have fifteen days after receipt of such request to file any objections.

C. Unless directed otherwise by the Board, discovery correspondence and other material (Interrogatories, Requests for Deposition, etc.) should not be sent to the Board.

D. Based on the representations of the parties, the last day for submission of discovery requests to the other party in this appeal shall be *Friday, December 29, 1995*.

III. Witnesses

A. To the extent possible, the Board expects the parties to cooperate and, without subpoena or other participation by the Board, make witnesses under its control and third party witnesses reasonably available as requested by the other party for deposition or for hearing. If necessary, the Board will issue subpoenas pursuant to Rule 21.

B. The Board considers any witness employed by the United States as under the control of the Department of Veterans Affairs.

C. Each party shall file its preliminary witness list with the other party by *Friday, December 29, 1995*. This preliminary witness list should include the identity of any witness whose testimony a party will offer as that of a qualified expert.

IV. Scope of Appeal: Entitlement, Quantum

A. The parties should try to agree on whether they want the Board initially to decide entitlement only (*i.e.*, the right to recover), or quantum as well (*i.e.*, the dollar amount of the recovery). In order to enable Appellant to obtain an expeditious final resolution of its appeal, the Board will include both quantum and entitlement in the scope of the hearing and the decision unless it approves the parties' joint request to limit the scope of the hearing to entitlement issues. In such case, if entitlement is found, the Board will continue the hearing in expectation that the parties should be able to resolve quantum through negotiation. If they cannot, the hearing on quantum will be conducted.

B. If the parties wish that the hearing and decision on this matter be limited to issues of entitlement, as part of the Joint Status Report provided for elsewhere in this Order, they shall indicate their decision in this regard with a full justification for limiting the Board's consideration of this appeal to entitlement issues.

C. Where the Board determines to hear both entitlement and quantum (or if this appeal is on quantum issues), the claimant should provide: (a) a detailed breakdown of claimed costs in schedule form; and (b) identification of the particular books, records, accounting data, or other documents, and any witnesses upon which it relies to establish the amount of its claim.

D. It should be noted that if Appellant is the claimant, the Government may audit the claim if it has not done so prior to initiation of the appeal. When the Government conducts such an audit, the Board expects Government counsel to take reasonable steps to insure the expeditious completion of the audit. Similarly, the Board expects Appellant's reasonable cooperation in the audit.

E. The parties should be prepared to inform the Board as whether both entitlement and quantum, or

just entitlement is to be tried at the hearing by the date of the Prehearing Conference scheduled elsewhere in this Order.

V. Stipulations

A. Many facts may have been admitted in the pleadings; however, to avoid misunderstandings and to further identify and narrow the matters in dispute, factual stipulations are beneficial. Well prepared stipulations will substantially reduce the amount of discovery and hearing time, and will expedite issuance of the Board's decision. Stipulations normally include basic contract data, identification of significant dates and events relevant to the dispute, agreed to labor and overhead rates (if quantum is to be tried), and similar factual matters necessary for resolution of the dispute, but not a matter of contention between the parties.

B. The parties are encouraged to consult for the purpose of the preparation of stipulations. Copies of stipulations agreed to shall be forwarded to the Board. The Board expects the parties to periodically report to the Board in the Joint Status Reports and the Prehearing Conference required by this Order on the progress being made in the preparation of stipulations.

VI. Hearing vs. Record Submission

A. In accordance with Rule 8, each party is to advise the Board if it elects to appear at a hearing to be conducted pursuant to Rules 1720 or whether it wishes to waive the hearing pursuant to Rule 11. Each party shall advise the Board in writing if it wants a hearing by *Friday, December 29, 1995*.

B. If a hearing is requested, the parties should confer as soon as possible and advise the Board as to: (a) a mutually agreeable hearing date and alternate date; (b) a mutually agreeable location; (c) if there is disagreement on the location, each party's desired location and justification therefor, including the number and location of witnesses; and (d) the estimated length of the hearing. The Board will attempt to schedule hearings on the earliest mutually convenient date and at the most practical location. The evidentiary portion of the record will normally be closed at the conclusion of the hearing.

C. If both parties request that the appeal be submitted for a decision on the written record without a hearing, the parties, as soon as practicable, shall suggest a mutually agreeable schedule for the submission of: (a) documentary evidence, affidavits, and other factual information; (b) rebuttal documentation; (c) briefs in which each party may argue how specific evidence in the record and relevant legal precedents support its position; and, the date on which the record shall be closed. If the parties cannot agree, each shall forward its proposed schedule for completion of the written record. Upon receipt of the above, the Board will establish a schedule consistent with the parties' request and the expeditious disposition of the appeal. Except for good cause shown, the Board will ordinarily not reopen the record for receipt of evidence after the closing date. However, the Board may, at any time prior to issuance of a decision, request additional evidence from either party. In such case, the Board will afford the nonproviding party the opportunity to submit rebuttal evidence.

VII. Settlement

A. The parties are encouraged to explore any opportunity to resolve the appeal through mutual agreement.

B. In the event the parties come to mutual agreement settling the case, that fact shall be communicated to the Board as soon as possible. When such communication is made, the Board should be informed if an Entry of Judgment and Dismissal will be required.

C. Upon the Board's receipt of notice of settlement, the Board will ordinarily dismiss the case with

prejudice subject to reinstatement if the settlement agreement is not effectuated. The Order of Dismissal will also normally require the parties to jointly submit a Stipulation of Dismissal to which the settlement agreement will be attached.

D. If an Entry of Judgment is required, such order will not be entered until receipt of the parties Joint Motion for Entry of Judgment and Stipulation of Dismissal.

VIII. Conferences

The Board expects the parties to meet or converse to clarify issues, exchange information, develop stipulations, agree on scheduling, and discuss settlement. Either party may request a conference of both parties with the Board, to be held in person or by telephone, at the Board's discretion, if the parties consider it would help resolve preliminary matters. The Board may also schedule conferences on its own motion when it determines they may be beneficial.

IX. Alternative Dispute Resolution

The Board expects the parties to confer on whether the use of Alternative Dispute Resolution methods is appropriate for this appeal. The Board refers the parties to the its ***Notice Regarding Alternative Methods of Dispute Resolution***, previously furnished the parties, in this regard. The parties shall report on the their efforts to utilize alternative dispute resolution methods in this matter in the Joint Status Report provided for elsewhere in this Order.

X. Status Reports

In addition to, or as part of submissions required above, the parties shall forward to the Board a Joint Status Report by ***Wednesday, January 10, 1996***. The Joint Status Report shall include any unresolved discovery issues and preliminary witness list, other matters indicated in this Order to be included in this Report, and any other matter relevant to the expeditious processing of this appeal.

XI. Correspondence with the Board and the Other Party

A. In accordance with the Rule 16, complaints, answers, replies and briefs (subpoenas shall be filed and served in accordance with Rule 21) shall be filed with the Board for service. To expedite processing of appeals, the Board encourages the parties to send copies of complaints, answers, replies and briefs to the other party contemporaneous with their filing with the Board.

B. Copies of all other papers filed with the Board shall be served on the other party and certify that such service has been made.

C. It is sometimes advantageous or convenient to provide papers to the Board via use of "facsimile" transmission. The Board will receive papers by facsimile transmission; however, any papers or documents so sent should also be sent in "hard copy" by hand or by mail. The Board's facsimile number is (202) 2755381.

XII. Communication With The Board

A. Rule 34 prohibits ex parte communications with the Board or its staff regarding any matter at issue in the appeal.

B. Communications or questions concerning administrative matters or procedures should be directed to the Board's clerk (2022736755) or, in her absence, the Board's administrative staff (2022736743).

XIII. Prehearing Conference

The Board will conduct a telephonic Prehearing Conference at *1:30 PM* (EST), *Tuesday, January 16, 1996* to discuss discovery issues, proposed hearing date, location, and length (or Rule 11 submission schedule) and any other matters pertinent to this appeal. The Board will issue a comprehensive Prehearing Order after this Prehearing Conference.

IT IS SO ORDERED

DATE: **November 6, 1995**

RICHARD W. KREMPASKY

Administrative Judge

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Franklin K. Lane, Esq., Los Angeles, California, for the Appellant.

John Manfredonia, Esq., Trial Attorney, and **Phillipa L. Anderson, Esq.**, Acting Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

MEMORANDUM TO THE PARTIES

In a Discovery Status Report, dated July 24, 1995, the parties estimate that discovery will be completed by December 29, 1995. Accordingly, the Board requests the parties to submit the information requested in the Board's Memorandum of June 8, 1995, by *Friday, December 29, 1995*.

DATE: **July 25, 1995** _____

GUY H. MCMICHAEL III

Chief Administrative Judge

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